

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Arnaud et al. Atty Docket: 3155/104
Serial No: 10/087,071 Art Unit: 3626
Date Filed: February 27, 2002 Examiner: Koppikar, V.
Invention: **System and Method for Building and Manipulating a Centralized Measurement Value Database**

Attn: Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**NOTICE OF APPEAL FROM THE PRIMARY EXAMINER
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES
(37 C.F.R. § 41.31)**

Applicant hereby appeals to the Board from the decision of the Primary Examiner, mailed May 7, 2007, rejecting claims 157-159 and 161.

Enclosed is a Pre-Appeal Brief Request for Review.

1. STATUS OF APPLICANT

This application is on behalf of other than a small entity.

2. FEE FOR FILING NOTICE OF APPEAL

Pursuant to 37 C.F.R. § 41.20(b)(1), the fee for filing the Appeal Brief is:

Other than a small entity \$500.00

Notice of Appeal fee due \$500.00

3. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R.1.136 apply.

Applicant petitions for an extension of time under 37 C.F.R. 1.136 (fees: 37 C.F.R. 1.17(a)(1)-(4)) for one month:

| Fee | \$120.00 |
|-----|----------|
|-----|----------|

4. TOTAL FEE DUE

The total fee due is:

| | |
|----------------------|----------|
| Notice of Appeal fee | \$500.00 |
| Extension fee | \$120.00 |

| | |
|----------------------|-----------------|
| TOTAL FEE DUE | \$620.00 |
|----------------------|-----------------|

5. FEE PAYMENT

Authorization is hereby made to charge the amount of \$620.00 to Deposit Account No. 19-4972.

Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

6. FEE DEFICIENCY

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 19-4972.

Date: September 7, 2007

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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 14.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P O Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P O Box 1450, Alexandria, VA 22313-1450.

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Pre-Appeal Brief Request For Review

Dear Sir:

Following a Final Office Action dated May 7, 2007, Applicants submit the present Request for Formal Review, by a panel of examiners, of the legal and factual basis of the rejections pending in the present case, in accordance with the Pre-Appeal Brief Conference Pilot Program.¹ Applicants believe that the issues are well-posed for appeal, and request formal review prior to appeal on the following grounds:

I. Background Synopsis of Subject Matter

The claims of the instant application relate to a system for providing assurance of quality of subjects' medical images.

II. Synopsis of Status of the Case

Claims 157-159 and 161 are pending. Claims 1-156, 160 and 162 have been canceled. Claims 157-159 stand rejected under 35 U.S.C. §102(a) as being anticipated by U.S. Patent 6,934,590 (Ogawa). Claim 161 stands rejected under 35 U.S.C. §103 as obvious from Ogawa in view of Official Notice.

¹ Official Gazette of the United States Patent and Trademark Office, vol. 1296, Number 2, (July 12, 2005).

III. Issue for Review Prior to Appeal:

1. A *prima facie* anticipation or obviousness rejection is improper when claim limitations are not found in the cited prior art reference(s).

It is well settled that a claim is invalid as anticipated under 35 U.S.C. § 102 only if a single prior art reference discloses either expressly or inherently, each limitation of the claim. *In re Cruciferous Sprout Litigation*, 301 F.3d 1343 (Fed. Cir. 2002). And, as set forth in MPEP §§ 2143 and 2143.03, the cited prior art references must teach or suggest all claim limitations before a *prima facie* case of obviousness can be made. Ogawa does not disclose, teach, or suggest every limitation of the present claims.

Claim 157 is directed to a system for providing assurance of quality of subjects' medical images which in part requires a computer program for performing quality checks "on a sample of the subjects' medical images." Ogawa describes a networked medical diagnosis apparatus concerned with image quality, but does not teach or suggest performing quality assurance checks on a sample of the subjects' medical images. Instead of using the subjects' medical images, Ogawa discloses quality checks using predetermined test patterns. This is explicitly discussed for example, at col. 4, lines 40-52:

For example, at the time of device installation, a predetermined test pattern is displayed on a display device (12, 14, 16); then the displayed test pattern is taken with an appropriate an image pickup device to obtain image data; thereafter the thus obtained image data is stored. After a certain period of time has passed, the above-described test pattern is displayed again to obtain the image data in the same manner as above; then the newly obtained image data and the image data preliminarily stored are compared with each other. A shift or the like between them is computed to obtain a change of the image quantitatively thereby checking the image quality.

Nothing within Ogawa teaches or suggests using anything other than a special test pattern to calibrate and provide quality assurance checks for the medical image display devices, much less the specific approach required by claim 157 of performing quality assurance checks on a sample of the subjects' medical images. Thus, for at least the foregoing reasons, Ogawa does not teach or suggest a system for providing assurance of

quality of subjects' medical images as required by claim 157. Claims 158, 159 and 161 depend from claim 157 and are allowable for the same reason.

In the Response to Arguments in the most recent Office Action, the Examiner asserts that Ogawa describes performing quality checks on a sample of the subjects' medical images at column 3, lines 60-65:

The image quality check may be performed automatically 60
or manually with a unit particularly arranged for the purpose
of the image quality check. Moreover, such particular unit
for the image quality check may be attached to each device
(12-20) or be a portable testing instrument as a separate type
to be only put in use at the time of the image quality check. 65

But the cited passage (and the rest of Ogawa) merely describes performing image quality checks based on the use of a special test devices such as "portable testing equipment." But this passage provides no information about which images are used by such test equipment. And again, as explained above, Ogawa's test equipment assures image quality using special test patterns, not medical images from the subjects themselves as the claims require. Thus, for at least the foregoing reasons, Ogawa does not teach or suggest a system for providing assurance of quality of subjects' medical images as required by claim 157. Claims 158, 159 and 161 depend from claim 157 and are allowable for the same reason.

Accordingly, it is submitted that the Examiner's rejection of this application is untenable and were this application to proceed to a full Appeal before the Board of Appeals and Interferences, the Examiner would clearly be reversed. The arguments presented in the responses to each of the previous office actions associated with this application are also maintained.

IV. Conclusion

The cited references fail to disclose all of the limitations of the present claims. Thus, it is respectfully submitted that a *prima facie* case of obviousness can be properly made or sustained based on the references relied upon by the Examiner. Therefore, allowance of all claims is respectfully requested.

Respectfully submitted,

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